



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,774	11/05/2001	Shigenori Morikawa	01711/LH	5900

1933 7590 10/03/2006

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK, NY 10001-7708

EXAMINER

WONG, BLANCHE

ART UNIT PAPER NUMBER

2616

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,774

Applicant(s)

MORIKAWA, SHIGENORI

Examiner

Blanche Wong

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,9-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,11 and 13 is/are allowed.
- 6) ☒ Claim(s) 1,5,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date Jun+Sep'06.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 1,3-6,9-11,13 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1,5,9,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (U.S. Pat No. 5,539,747) in view of Jonsson (U.S. Pat No. 6,115,613).

With regard to claim 1, Ito discloses

data communication means for connecting to a communication network
(**network device 110 in Fig. 1, col. 6, line 62**) to carry out data communication (**a plurality of communication paths 121-124 in Fig. 1, col. 6, line 61**);

means for recognizing a start and an end of transmission/reception (**each user device has a counter called a window counter**", col. 7, lines 1-2) of a set of transmitted/received objective data ("... each of [user devices] communications with other user devices ... transmitting to/receiving from cells", col. 6, line 64-col. 7, line 1);

means for measuring (**window counter**) a transmitted/received data amount from the start to the end of transmission/reception of the set of objective data;

means for judging (**cell loss possibility judging unit 120 in Fig. 1, col. 7, line 66**) whether or not the measured transmitted/received data amount has reached a specified data amount;

means for (**cell loss possibility judging unit**), when it is judged that the measured transmitted/received data amount has reached the specified data amount, warning a user that the transmitted/received data amount has reached the specified data amount (“**The cell loss possibility judging unit 120 judges as for each of the output buffers if cell abandonment is likely to occur (overflow). Subsequently, if the cell loss possibility judging unit judges that an output buffer is likely to abandon cells, it notifies the traffic controller ...**”, col. 8, lines 10-12); and

means for (**timer 403, col. 10, line 35**), when it is judged that the measured transmitted/received data amount has reached the specified data amount, temporarily suspending transmission/reception of the set of objective data (**a regulation notice and a regulation release notice from the cell loss possibility judging unit, col 11, lines 11-12**), receiving an instruction (**regulation notice**) to resume or terminate transmission/reception of the set of objective data from the user, and resuming or terminating transmission/reception of the set of objective data in accordance with the instruction (“**The second initial value is referred when the cell loss possibility judging unit judges that overflow is a possibility. The second initial value [of the time] is set to make a reset cycle longer ...** “, col. 11, lines 4-8).

However, Ito fails to explicitly show a data communication means in which accounting is made according to a transmitted/received data amount.

In an analogous art, Jonsson discloses data communication where accounting that is made according to a transmitted/received data amount (“...threshold of allowable ... billing, col. 7, lins 46-48).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include accounting that is made according to a transmitted/received data amount in Ito’s network device. The suggestion/motivation for doing so would have been to provide for effective billing and to lessen congestion. Jonsson, col. 7, line 29-col. 8, line 58. Therefore, it would have been obvious to combine Jonsson with Ito for the benefit of an accounting that is made according to a transmitted/received data amount, to obtain the invention as specified in claim 1.

With regard to claim 5, Ito further discloses
means for setting an upper limit value (**window counter**) corresponding to a maximum allowed data amount from continuous transmission/reception of any set of objective data;

wherein the judgment by the judging means is performed such that, when the set upper limit value is reached, it is judged that the transmitted/received data amount has reached the specified data amount (“**The cell loss possibility judging unit 120 judges as for each of the output buffers if cell abandonment is likely to occur (overflow). Subsequently, if the cell loss possibility judging unit judges that an**

output buffer is likely to abandon cells, it notifies the traffic controller ...", col. 8, lines 10-12).

With regard to claims 9 and 10, see analysis for claim 1.

Allowable Subject Matter

4. Claims 6,11,13 are allowed.

Conclusion

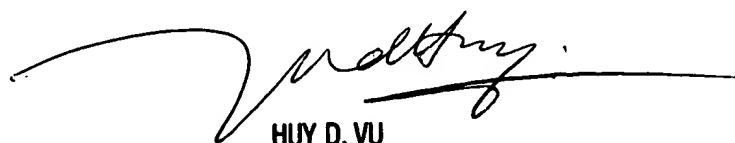
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BW

BW
September 18, 2006



HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600